*THE HONOURABLE Dr. JUSTICE G. YETHIRAJULU

+Writ Petition No.10799 of 2004 & batch

% Dated: 14-10-2004.

M. Kasturi**. ... Petitioner**

$ The Sr. Deputy Director General, Corporate Office, BSNL , New Delhi.
and others

... Respondents

! **Counsel for petitioner: Mr.Krishna Devan**

^ **Counsel for respondents: Mr.C. Yadagiri, S.C. for BSNL**

< GIST:

>HEAD NOTE:

? Cases referred:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

-

Writ Petition Nos.10799, 10885, 10886, 10901 and 9758 of 2004

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Writ Petition No.10799 of 2004

Between:

Smt. M. Kasturi, W/o M. Suryakumar,
O/o Executive Engineer (Electrical), BSNL,Nampally, Hyderabad.

... PETITIONER

AND

1 The Sr. Deputy Director General, Corporate Office, BSNL , New Delhi.
2 The Chief General Manager, BSNL, AP, Hyderabad.
3 The Principal General Manager, Telecom District, Hyderabad, AP.
4 The Principal Chief Engineer (E), BSNL. Electrical Zone, Hyderabad-1.
5 The Supdt . Engineer (Electrical), BSNL, Nampally, Hyderabad.
6 The Executive Engineer (Electrical), BSNL, Nampally, Hyderabad.

…RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a Writ more particularly in the nature of Writ of Mandamus by declaring the action of the respondents in rejecting the claim of the petitioner for conversion into full time casual labourer and for the grant of temporary status vide order No. B(6)/BSNL/TED-I/304,
dt.15-4-2004 passed by the Executive Engineer, Electrical Division, Tirupati, and also termination of the services of the petitioner by shifting to a contractor if any, without any valid reason, notice or at least order in writing, as arbitrary, discriminatory, illegal, unjust and unsustainable, being violation of Art. 14, 16 and 21 of the Constitution of India and set aside the same and consequently to direct the respondents to convert the petitioner into full time casual labourer and also to re-engage the petitioner along with consequential benefits.

Counsel for the Petitioner: Mr.Krishna Devan.

Counsel for the Respondents 1 to 6: Mr. C. Yadagiri, S.C. for BSNL.

Writ Petition No. 10885 of 2004

Between:

Mr. B. Nageswara Rao S/o Late B. Nagamanaidu
O/o Executive Engineer Electrical Division, BSNL, Tirupati

... PETITIONER

AND

1. The Senior Deputy Director General (Electrical) BSNL, Government of India

Enterprise, 10th Floor, Chanderlok Building, 36 Janpath, New Delhi 110001.

2. The Chief General Manager, BSNL. Abids, Nampally Road, Hyderabad
3. The General Manager BSNL, Tirupati SSA Unit, Tirupati
4. The Principal Chief Engineer, BSNL, Electrical Zone, 5-8-363, Chirag Ali Lane, Abids, Hyderabad.
5. The Superintendent Engineer, BSNL, Electrical Zone, Vijayawada.
6. The Executive Engineer, BSNL, Electrical Zone, H. NO. 19-6-18, D.R. Mahal Road Tirupati

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a Writ more particularly in the nature of Writ of Mandamus by declaring the action of the respondents in rejecting the claim of the petitioner for the grant of temporary status of a Group D after conversion into full time casual labourer vide order No. BN/BEDT/03-4/10, dt.31-3-2004 passed by the Executive Engineer electrical Division, Tirupati and also termination of the Services of the petitioner without any reason notice or at least order in Writing, as arbitrary, discriminatory, illegal unjust and unsustainable, being in violation of Arts.14, 16 & 21 of the Constitution of India and set aside the same and consequently to direct the respondents to grant temporary status of a Group D after the same and consequently to direct the respondents to grant temporary status of a Group D after conversion into full time casual Labourer and further regularisation as Group D along with consequential benefits.

Counsel for the Petitioner: Mr.Krishna Devan

Counsel for the Respondents: Mr.T. Hanumanth Reddy

Writ Petition No.10886 of 2004

Between:

S. Bhaskar, S/o S. Anjaneyulu,
O/o Supdt. Engineer, BSNL, Electrical Zone, 5-8-363, Chirag Ali Lane, Abids, Hyderabad.

... PETITIONER

AND

1. The Senior Deputy Director General (Electrical) BSNL, Govt. of India Enterprise, 10th Floor, Chanderlok Buildings, 36 Janpath, New Delhi 110 001.
2. The Chief General Manager, BSNL, Abids, Nampally Road, Hyderabad.

3. The Principal General Manager, BSNL, Hyderabad District, Suryalok Complex, Hyderabad.

4. The Principal Chief Engineer, BSNL, Electrical Zone, 5-8-363, Chirag Ali Lane,Abids, Hyderabad.

5. The Supdt. Engineer, BSNL, Electrical Zone, 5-8-363, Chirag Ali Lane,Abids, Hyderabad.

6. The Executive Engineer, BSNL, Electrical Zone, 5-8-363, Chirag Ali Lane,Abids, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a Writ more particularly in the nature of Writ of Mandamus by declaring the action of the respondents in rejecting the claim of the petitioner for the grant of temporary status of a Group D after conversion into full time casual laborer vide order No. 9(16) BSNL/ECH/2004(08) dt. 31-3-2004 passed by the Superintending Engineer, Electrical circle, Hyderabad and also terminating the services of petitioner as arbitrary, discriminatory, illegal, unjust and unsustainable, being in violation of the Arts.14, 16 and 21 of the Constitution of India and set aside the same and consequently direct the respondents to grant temporary status of a Group D after conversion into full time casual laborer and further regularisation as Group D along with consequential benefits.

Counsel for the Petitioner: Mr.Krishna Devan

Counsel for the Respondents: Mr.R.S.Murthy

Writ Petition No.10901 of 2004

Between:

M. Subba Rao S/o M. Subramanyam Rao
O/o Supdt., Engineer BSNL,
Electrical Zone, 5-8-363, Chirag Ali Lane Abids, Hyderabad

... PETITIONER

AND

1. The Senior Deputy Director General (Electrical) BSNL Government of India Enterprise, 10th Floor, Chanderlok Building,'36 Janpath, New Delhi

2. The Chief General Manager, BSNL, Abids, Nampally road, Hyderabad.

3. The Principal General Manager, BSNL, Hyderabad District, Suryalok Complex, Hyderabad.

4. The Principal chief Engineer, BSNL, Electrical Zone, 5-8-363, Chirag Ali Lane, Abids, Hyderabad.

5. The Supdt. Engineer BSNL Electrical Zone, 5-8-363, Chirag Ali Lane, Abids, Hyderabad.

6. The Executive Engineer, BSNL, Electrical Zone 5-8-363, Chirag Ali Lane, Abids, Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a Writ more particularly in the nature of Writ of Mandamus by declaring the action of the respondents in rejecting the claim of the petitioner for the grant of temporary status of a Group D after conversion into full time casual labourer vide order No.9 (16) BSNL/ECH/2004 (08), dt.31-3-2004 passed by the Superintending Engineer Electrical Circle, Hyderabad and shifting of the petitioner to a contractor as arbitrary, discriminatory, illegal unjust and unsustainable, being in violation of Arts.14, 16 & 21 of the Constitution of India and set a side the same and consequently to direct the respondents to grant temporary status of a Group D after the conversion into full time casual Labourer and further regularisation as Group D along with consequential benefits.

Counsel for the Petitioner: Mr.Krishna Devan

Counsel for the Respondents: Mr.R.S.Murthy

Writ Petition No. 9758 of 2004

Between:

Smt.B.Rukmini, w/o Sri B.Bhimaiah,
O/o Electrical Supdt.,Engineer, BSNL, Hyderabad.

... PETITIONER

AND

1. The Senior Deputy Director General (Electrical), BSNL, Government of India Enterprise, 10th Floor, Chanderlok Building, 36 Janpath, New Delhi -110 001.

2. The Chief General Manager, BSNL, Abids, Nampally Road, Hyderabad.

3. The Principal General Manager, BSNL, Hyderabad District, Suryalok Complex, Hyderabad.

4. The Principal Chief Engineer, BSNL, Electrical Zone, 5-8-363, Chirag Ali

Lane, Abids, Hyderabad.

5. The Supdt.Engineer, BSNL, Electrical Zone, 5-8-363, Chirag Ali Lane, Abids, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a Writ more particularly in the nature of Writ of Mandamus by declaring the action of the respondents in rejecting the claim of the petitioner for the grant of temporary status of a Group D after conversion into full time casual labourer vide order No. 9(16) BSNL(ECH/2004(09) dt.31-3-2004 passed by the Superintending Engineer , Electrical circle, Hyderabad as arbitrary, discriminatory, illegal, unjust and unsustainable, being violative of the Arts.14, 16 and 21 of the Constitution of India and set aside the same and consequently to direct the respondents to grant temporary status of a Group D after conversion into full time casual labourer and further regularisation as Group D along with consequential benefits.

Counsel for the Petitioner: Mr.Krishna Devan.

Counsel for the Respondents: Mr.C. Yadagiri, Standing Counsel for BSNL.

The Court at the admission stage made the following:

ORDER:

1. These writ petitions are filed seeking a writ of mandamus by declaring that the action of the respondents in rejecting the claim for (1) conversion of the petitioners into full time casual labourers, (2) for grant of temporary status, (3) to declare that the termination of the services of the petitioners by the respondents by shifting to contractors without any valid reason, notice or at least an order in writing, as arbitrary, discriminatory, illegal, unjust and unsustainable being violative of Articles 14, 16 and 21 of the Constitution of India, (4) to set aside the same, (5) to direct the respondents to convert the petitioners into full time casual labourers, and (6) to re-engage them along with consequential benefits.

2. Since the questions involved in the writ petitions and the reliefs

prayed for against the respondents are identical, the writ petitions are disposed of through this common order.

3. Before dealing with other writ petitions, I would like to dilate upon the facts stated by the parties in Writ Petition No.10799 of 2004.

Writ Petition No.10799 of 2004

4. The Department of Telecom, New Delhi evolved a scheme on 7-11-1989 called the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989 {hereinafter referred to as the 1989 Scheme for regularization of casual labourers as Class-IV on fulfilling certain conditions. Regulations 4 and 5 of the said Scheme reads as follows:

4. A) Vacancies in the Group-D Cadres in various offices of the Department of Telecommunications would be exclusively filled by regularization of casual labourers and no outsiders would be appointed to the cadre except in the case of appointments on compassionate grounds, till the absorption of all existing casual labourers fulfilling the eligibility conditions including the educational qualifications prescribed in the relevant Recruitment Rules. However, regular Group D staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In the case of illiterate Casual Labourers, the regularization will be considered only against those posts in respect of which illiteracy will not be an impediment in the performance of duties. They would be allowed age relaxation in the performance of duties. They would be allowed age relaxation equivalent to the period for which they had worked continuously as casual labour for the purpose of age limits prescribed for appointment to the Group D cadre, if required. Outside recruitment for filling up the vacancies in Gr.D will be permitted only under the condition when eligible casual labourers are not available.

B) Till regular Gr.D vacancies are available to absorb all the casual labourers to whom this Scheme is applicable, the casual labourers would be conferred a **Temporary Status**, as per the details given below.

5. **Temporary Status:**

i. Temporary status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five day week). Such casual labourers will be designated as **Temporary Mazdoor.**

ii. Such conferment of temporary status would be without reference to

the creation/availability of regular Gr.D posts.

iii. Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on a need basis. He may be deployed anywhere within the recruitment unit/territorial circles on the basis of availability of work.

iv. Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Gr.D posts.

5. According to the said scheme, no casual labour engaged after 30-3-1985 should be available for consideration for conferring temporary status. The 1989 Scheme was, however, extended through the order dated 17-12-1993. Under the said Scheme it was decided to bring all those Casual Mazdoors who were engaged by the Circles during the period from 31-3-1985 to 22-6-1988, who were still continuing for such works in the Circles where they were initially engaged, and who were not absent for the more than 365 days counting from the date of issue of the order dated 17-12-1993. Further, the cut off date for grant of temporary status to the casual labourers working as on 1-8-1998 was also prescribed through the order dated 14-8-1998.

6. On 16-9-1999 the Assistant Director General (STN), Ministry of Telecom Services, New Delhi (Lr.No.269-13/99-STN-IP) addressed a letter to all the Chief General Managers (CGMs) giving one time relaxation to part-time casual labourers working with 4 or more hours' duty per day and who have worked for 240 days in the preceding 12 months for conversion into full time casual labourers. The letter dated 16-9-1999 reads as follows:

I am directed to refer to this office letter No.269-10/89-STN dated 14-8-98 on the above mentioned subject. The matter has been examined in consultation with Telecom Finance and it has been decided as below:

v. As a one-time relaxation, part time casual labourers with 4 or more hours of duty per day who have worked for 240 days in the preceding 12 months may be converted into full time casual labourers. This will be applicable only to the extent of the

numbers indicated against respective field units in the Annexure.

vi. They should be engaged as casual labourers subject to suitability.

vii. They should be engaged as casual labourers only where there is shortage of Group D staff (i.e., existence of vacant Group D posts after accounting for all TSMs and existing full time casual labourers) and no posts should be created for the purpose.

viii. In the event, there is no shortage in Group D at the station where the part time casual labourer is to be engaged to work as full time casual labourers, the part time casual labourers will not be converted into full time casual labourers.

ix. Payment to the above casual labourers may be made as provided for under Rule 331 of P & T FHB Vol.1. Under no circumstances should they are paid through master roll.

x. No part time casual labourers will be engaged hereafter and any violation will result in disciplinary action.

xi. Orders will take effect from the date of issue.

This issues with the concurrence of Telecom Finance vide their diary No.2409/99-FAI dated 8-9-99.

7. Subsequently, the Assistant Director General (STN), Department of Telecom Services, Hyderabad addressed a letter to all the concerned on 29-9-2000 and the same reads as follows:

The employees unions are demanding regularization of all the casual labourers. This issue was under consideration for quite sometime. It has been decided to regularize all the casual labourers working in the Department, including those who have been granted temporary status, with effect from 01-10-2000 in the following order:

1. All casual labourers who have been granted temporary status up to the issuance of orders No.269-4/93-STN-II dated 12-2-99, circulated vide letter No.269-13/99-STN-II dated 12-2-99 and further vide letter No.269-13/99-STN-II dated 9-6-2000.

2. All full time casual labourers as indicated in the Annexure

3. All part time casual labourers who were working for four or more hours per day and converted into full time casual labourers vide letter No.269-13/99-STN-II dated 16-9-1999.

4. All part time casual labourers who were working for less than four hours per day and were converted into full time casual

labourers vide letter No.269-13/99-STN-II dated 25-8-2000.

5. All Ayahs and Supervisors converted into full time casual labourers as per order No.269-10/97-STN-II dated 29-9-2000.

The number of casual labourers to be regularized in categories (2) to (5) above is given in the Annexure enclosed. The figures given in the Annexure are based on information received from the circles.

The casual labourers indicated from (1) to (5) above are to be adjusted against available vacancies of Regular Mazdoors. However, Chief General Managers are also authorized to create posts of Regular Mazdoors as per the prescribed norms, and to that extent, the prescribed ceiling for the circle will stand enhanced.

As per this office letter No.269-4/93-STN-II dated 12-2-99, vide which temporary status was granted to casual labourers eligible on 1-8-98, no casual labourers were to be engaged after this date and all casual labourers not eligible for temporary status on 1-8-98 were to be disengaged forthwith. Therefore, there should be no casual labourers left without temporary status after 1-8-98 (other than those indicated in serial Nos. (2) to (5) above). However, if there is still any case of casual labourers left out due to any reasons that maybe referred to the Head Quarters separately.

This issues with the concurrence of Telecom Finance vide their Diary No.3536/2000/FA-I dated 29-9-2000.

8. A letter dated 27-9-2002 addressed by the 4th respondent to the first respondent indicates that the details of full time and part-time casual labourers who were working under BSNL, Electrical Zone, Hyderabad were enclosed by mentioning that all those casual labourers were working in the unit prior to the issue of the ban order dated 12-2-1999. After the issue of the ban orders, the mode of payment to the above casual labourers were shifted from the department side to the contractor side i.e., the agency has been making payment to those workers presently to ensure proper and efficient continuity of the work and to safeguard the security of the offices. Those full time/part-time casual labourers were allowed to continue, but with the payment mode shifted to the contractor because of the ban orders dated 12-2-1999. The 4th respondent therefore requested the first respondent to examine the cases of those candidates and take up the matter with the authorities for

regularizing their services.

9. In the said letter, the 4th respondent further mentioned that there sufficient number of vacancies in the Group-D are available to accommodate all those casual labourers.

10. The Central Administrative Tribunal through its order dated 24-3-1004 in O.A.No.296 of 2003 considered the case of one K.A.Yasanullah and allowed the application directing the respondents to pass necessary orders in respect of the said person for confirmation of temporary status within a period of two months from the date of communication of the said order.

11. The petitioner in the said application was initially engaged as a daily wage casual labour from January 1988 till December 1998. He claimed that since he worked for 1265 days in the said period and completed more than 240 days as on 1-8-1988, he is eligible for confirmation of temporary status.

12. The Telecom Department conceded in the counter that the said applicant worked for 322 days in 1998 and from 8-4-1989 to 24-8-1989 he performed job work on contract basis and from 1-12-1999 onwards the job works were given to agencies on calling for quotations. The Central Administrative Tribunal allowed the O.A. on the basis of the material that the applicant worked for more than 240 days as on 1-8-1998.

13. In pursuance of the above Scheme, Circulars and letters, the Chief General Manager, Department of Telecommunications, Hyderabad in his letter No.EA/STB/20-2/CORR/2000/3 dated 29-9-2000 has called for the names of the persons who are working for more than four hours in the prescribed proforma from the General Managers of Telecom District, Hyderabad and other SSA Units. The concerned authorities submitted the required information relating to the

respective zones. The third respondent granted approval of conversion of part-time casual labourers into full time casual labourers on different dates. But, the case of the petitioner was not considered, therefore, he submitted a representation on 1-11-2002 seeking grant of temporary status of a Group-D cadre after conversion as his case has already been forwarded and pending with the Corporation Office. Despite the above representation, the first respondent did not act upon it. Since the petitioner was discriminated, he approached the Central Administrative Tribunal by filing O.A.No.1527 of 2003 and the Tribunal through the judgment dated 5-5-2003 directed the respondents-authorities to dispose of the representation of the petitioner pending with them within a period of two months. Even after the expiry of two months, the respondents have not responded, but on 5-1-2004 the second respondent informed that the matter is still pending with the Directorate and it would take some more time for taking a decision in the matter. Subsequently, the petitioner filed Contempt Petition No.53 of 2004, which was closed on 15-4-2004 giving liberty to the petitioner to file fresh O.A., if he so desires.

14. While so, the fifth respondent issued an order on 31-3-2004 informing that the competent authority has examined the representation of the petitioner and other records and found that he was working as a contract labour and hence his request cannot be considered for conversion as full time casual labourer.

15. In the mean while, the Full Bench of the Central Administrative Tribunal at Jaipur held that in view of the absence of the notification enabling the respondent Corporation to be brought under the jurisdiction of the Tribunal, the cases pertaining to Bharat Sanchar Nigam Limited (BSNL) are prohibited from entertaining. While the petitioner was continuing as casual labourer under BSNL, a communication was received mentioning that they are discontinued as part-time casual labour through contractor and the contract work was discontinued. She therefore filed the present writ petition seeking a writ of mandamus by declaring the action of the respondents in rejecting the claim for conversion into full time casual

labourer and for the grant of temporary status and also to declare that the termination of her services by shifting to a contractor without any valid reason, notice or at least an order in writing, as arbitrary, discriminatory, illegal, unjust and unsustainable being violative of Articles 14, 16 and 21 of the Constitution of India and to set aside the same and consequently to direct the respondents to convert the petitioner into full time casual labourer and also to re-engage the petitioner along with consequential benefits.

16. The respondents are contending that in view of the continuation of the ban and shortage of staff including non-availability of regular Group-D staff from the territorial civil circle, the arrangement had to be continued in exigencies. The petitioner could not be continued from 11-10-1999 having regard to the policy of the department vide letter dated 12-2-1999 and modification dated

15-6-1999 to discontinue the engagement of casual labour, except for a period of 100 days. Accordingly, the respondents were constrained to discharge the petitioner from 11-10-1999 and entrust the job of sweeping to contractors on the basis of vacancies available from time to time. The continuance of the petitioner with the contractor and the termination thereafter was not within the knowledge of the respondents and no payments towards wages have been made by the respondents to the petitioner at any time after 10-10-1999. On the pretext that the respondents discontinued the engagement of the petitioner w.e.f.

11-10-1999 the respondents sent a communication to the petitioner on 15-4-2004 in compliance of the direction given by the Central Administrative Tribunal in O.A.No.1527 of 2003 informing that there is no scope to consider the case of the petitioner for grant of temporary status, as she was disengaged as part-time casual labour from

11-10-1999 and as the petitioner worked as a contract labour under a contractor, there is no scope to grant temporary status pursuant to the 1989 Scheme and the letter dated 16-9-1999. The communication from the Ministry of Telecommunications was received by the concerned authorities prior to the disengagement of the petitioner on 11-10-1999. The

said communication extended the benefit of one time relaxation of part-time casual labourers with four or more hours' duty per day and who have worked for 240 days in the preceding 12 months for conversion into full time casual labourers.

17. The 1989 Regulations have been issued on 7-11-1989. Regulation No.5 of the 1989 Regulations, as extracted supra, specify that temporary status would be conferred on all the casual labourers who were currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days. These Regulations have been extended from time to time viz., on 7-12-1993 and 16-9-1999. Since the 1989 Regulations have been extended from time to time and as the last extension being 16-9-1999, the casual labouerers who worked under the respondents prior to 16-9-1999 who have worked for 240 days in the preceding 12 months are entitled for temporary status.

18. The fourth respondent in his letter bearing No. MOG-12022/1/ BSNLEZH/2002/606 dated 27-9-2002 addressed to the first respondent requesting regularization of full time and part time casual labourers working under his zone. The contents of the letter reads as follows:

> 1. The details of full time and part time casual labourers who are working under BSNL Electrical Zone, Hyderabad are enclosed herewith as Annexure I and Annexure II. All the above casual labourers were working in this unit prior to the issue of DOT, New Delhi ban order No.269-4/93-STN-II (P1) dated 12-2-1999. After the issue of the above ban orders, the mode of payment to the above casual labourers was shifted from department side to the contractor side i.e., the agency has been making the payment to these workers presently. To ensure a proper continuity of the work and safeguard the security of the offices, these full time/part time casual labourers were allowed to continue, but with the payment mode shifted to the contractor, because of the ban orders dated 12-2-1999.
>
> 2. Since these casual labourers are pressing for regularization of their services, the matter was taken up with CGMT, AP Circle, Hyderabad and with the General Managers of the respective SSA's. But citing reasons like – payment being

made by the contractor / working on contract basis / delayed submission of their cases – etc., the SSA's as well as the O/o.CGMT, Hyderabad are not processing their cases for regularization.

3. In the above circumstances, it is requested to examine the above cases of your level and take up the matter with BSNL Headquarters for regularizing their services. It is also submitted that sufficient number of vacancies in the grade of Group D are available under this zone to accommodate all these casual labourers.

19. Annexure II appended to the above letter dated 27-9-2002 gives the particulars regarding the 1) name of the casual labour, 2) date of birth, 3) date of initial engagement, 4) working hours of the time of initial engagement, 5) authority of engagement, 6) mode of payment, 7) present working hours, 8) date from which working hours enhanced, 9) present mode of payment, 10) place of working, 11) nature of work, and remarks. The particulars relevant for the purpose of these writ petitions are extracted herein below:

ANNEXURE TO LR.NO.G-12022/1/BSNLEZH/2002/606 Dt. 27-9-2002.

S.No.	Name	Date of initial engagement	Working hours at the time of initial engagement	Present working hours	Date from which working hours enhanced
	(A) working at Hyderabad and coming under PGM, Hyderabad.				
1.	Smt.B.Rukmini(Petitioner in W.P.No.9758 of 2004)	1-9-1989	3 hours	6 hours	From April 1990 onwards
2.	M.Subba Rao(Petitioner in W.P.No.10901 of 2004)	1-4-1996	4 hours	4 horus	NA
3.	S.Bhaskar(Petitioner in W.P.No.10886 of 2004)	1-4-1996	4 hours	4 hours	NA
4.	M.Vamadeva	1-8-1996	4 hours	4 hours	NA
5.	Smt.M.Kasturi(Petitioner in W.P.No.10799 of 2004)	16-9-1991	3 hours	5 hours	1-12-1997
	(F) working at Tirupathi and coming under GMTD, Tirupathi				
11)	K.Chinnabba	1-10-1992	2 hrs. 30 min.	4 hrs. 20 min.	---

12)	B. Sreenivasa Rao	5-7-1994	8 hours	6 hours	1-6-1997 (reduced)
13)	B. Nageswara Rao(Petitioner in W.P.No.10885 of 2004)	5-7-1994	8 hours	6 hours	1-7-1997 (reduced)

20. The petitioner herein is shown at S.No.5 of the above Annexure. The above details of the part-time casual labourers furnished by the fourth respondent for consideration by the first respondent is making the position clear that the petitioner was working since 1991. The counter-affidavit filed by the respondents also indicate that there was requirement of part-time casual labourers to undertake the work, but in view of the ban orders for continuation of part-time casual labourers, the mode of payment was shifted to the contractor by extracting the same work from those persons, including the petitioner, as part-time casual labourers. The above circumstances indicate that the Ministry of Telecom Services extended the benefit of temporary status to all full time and part-time casual workers and simultaneously imposed ban on continuation or fresh recruitment of such workmen in order to abolish the system of casual labourers in the department. When the petitioner was eligible in all respects for extending the benefit of temporary status, it is not just on the part of the respondents to deny the benefit of temporary status by taking their own action as a pretext to avoid conferring the temporary status. Had the petitioner been disengaged for want of work prior to the cut-off date, the position would have been different. But, as the respondents are extracting the same work, which they used to extract prior to the imposition of ban on appointment of casual labourers, the change in mode of payment through contractor will not become an obstacle for the purpose of consideration of the case of the petitioner for conferring the temporary status. The intention of the Ministry of Telecom Services is expressly conveyed through various circulars and it was intended only to benefit the full time and part-time casual labourers who fulfilled the norms prescribed by the department. It is not the intention of the Ministry of Telecom Services to deny the benefit on some pretext or other in respect of casual

labourers who fulfilled the conditions mentioned in the circulars.

21. The respondents contended that the name of the petitioner is shown in the list furnished in pursuance of the letter from the concerned authorities to send the names of part-time casual labourers for the purpose of considering their cases for conferring temporary status only to indicate that she is working as a contract labour and not for any other purpose. This argument on behalf of the respondents cannot be accepted at any stretch of imagination, as there was no communication from the concerned authorities to send the names of the part-time casual labourers who are working on contract basis.

22. The learned counsel for the respondents drew the attention of this court to a judgment of the Supreme Court in **Union of India v. Mohan Pal** wherein the Supreme Court while dealing with the Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1993 held that the Scheme of 1993 provides that a casual labour who has completed 240 days of working in a year would be entitled to temporary status. The conferment of temporary status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme and it cannot be treated as an ongoing Scheme.

23. In the light of the judgment of the Supreme Court also, the casual labour, who has completed 240 days of work by the relevant date would be entitled for temporary status. In the present case also the petitioner completed 240 days as required under the scheme. Therefore, she is also eligible to be considered for conferring temporary status. Since no attempt was made by the respondents to apply this scheme to the petitioner, her case was rejected on the pretext of her engagement through a contractor.

24. In the light of the above discussion, I hold that the part-time casual labourers who worked in the respondent Company as on 1-8-1998 and who have completed 240 days immediately preceding 1-8-1998 are entitled to be included in the scheme for granting of temporary status. Since the petitioner continuously worked as a part-time

casual labour as on 1-8-1998 for more than 240 days and continued to work till 10-10-1999 in the same capacity, she is entitled for granting of temporary status after treating her as a regular casual labour.

Writ Petition No.10885 of 2004

25. The petitioner in this writ petition joined as a part time casual labour in the office of the sixth respondent on 5-7-1994 for eight hours a day and his working hours were reduced to six hours w.e.f. 27-9-2002. Again the working hours were increased to eight hours from 1-5-2003 to 1-5-2004. The petitioner claims that since he worked for more than 240 days immediately preceding 16-9-1999, he is entitled to be conferred with temporary status.

26. The petitioner is shown at S.No.13 of the Annexure II appended to the letter dated 27-9-2002 (Annexure extracted at paragraph No.19). From the Annexure II it is clear that the petitioner is working since 5-7-1994 and has done the work for 8 hours a day up to 30-6-1997 and from 1-7-1997 to 31-8-1999 he worked for 6 hours a day. As per the letter of the Ministry of Telecom Services dated 16-9-1999 the part time casual labourers with four or more hours of duty per day who have worked for 240 days in the preceding 12 months are entitled to be considered for conversion as full time casual labourers. The said concession was given as a one time relaxation. In view of the claim made by the petitioner in the writ affidavit that he worked in the respondents' department since 5-7-1994 till 31-8-1999, and in view of the findings given by me in Writ Petition No.10799 of 2004, I am of the view that the petitioner is also entitled to be considered as a full time casual labour and consequently for conferment of the temporary status.

Writ Petition No.10886 of 2004

27. The petitioner in this writ petition contends that he has been working as a part-time casual labour from 1-4-1996 for 4 hours a day. He was issued a rejection letter on 31-3-2004 informing him that though he was engaged for 4 hours a day from 1-4-1996 till August 1999, he was

subsequently engaged through the contractor, that he has been working as a contract labour through a valid contract for the previous 3 years and 6 months, as such he cannot be considered as the part-time labourer engaged by the Department from September 1999. The Scheme for conversion of part-time casual labourers into full time casual labourers or the scheme for grant of temporary status does not contemplate conversion of his services as a contract labour into full time direct casual labourer of the department or grant of temporary status to a contract labourer.

28. Had the respondents considered the case of the petitioner on the basis of the Circular dated 16-9-1999, the respondents would have realized that the petitioner has satisfied the requirement of working for 4 hours a day for 240 days in thepreceding 12 months and in such an event he would have been converted into a full time casual labour and later with temporary status. As already observed by me in Writ Petition No.10799 of 2004 supra, attaching the petitioner to a contractor to getover the instructions of the Government not to engage casual labourers cannot be attributed to the petitioner and the events subsequent to the Circular dated 16-9-1999 cannot be taken as a pretext to deny the benefit extended by the Government as a one-time relaxation for conversion as full time casual labourers. The petitioner is shown at S.No.4 of Annexure II of the letter dated 27-9-2002 addressed by the fourth respondent to the first respondent requesting to regularize the services of the workmen shown in Annexures I and II as their cases also fall under the parameters of the Circular dated

16-9-1999. Since the petitioner fulfilled the condition of 4 hours of work and 240 days in the preceding 12 months from 1-8-1998, he is also entitled to be considered for conversion as a full time casual labour.

Writ Petition No.10901 of 2004

29. The petitioner contends that he has been working as a part-time casual labour from 1-4-1996. He was issued a rejection letter on 31-3-

2004 informing him that though he was engaged for 4 hours a day from 1-4-1996 till August 1999, he was subsequently engaged through the contractor, that he has been working as a contract labour through a valid contract for the previous 3 years and 6 months, as such he cannot be considered as the part-time labourer engaged by the Department from September 1999. The Scheme for conversion of part-time casual labourers into full time casual labourers or the scheme for grant of temporary status does not contemplate conversion of his services as a contract labour into full time direct casual labourer of the department or grant of temporary status to a contract labourer.

30. Had the respondents considered the case of the petitioner on the basis of the Circular dated 16-9-1999, the respondents would have realized that the petitioner has satisfied the requirement of working for 4 hours a day for 240 days in thepreceding 12 months and in such an event he would have been converted into a full time casual labour and later with temporary status. As already observed by me in Writ Petition No.10799 of 2004 supra, attaching the petitioner to a contractor to getover the instructions of the Government not to engage casual labourers cannot be attributed to the petitioner and the events subsequent to the Circular dated 16-9-1999 cannot be taken as a pretext to deny the benefit extended by the Government as a one-time relaxation for conversion as full time casual labourers. The petitioner is shown at S.No.2 of Annexure II of the letter dated 27-9-2002 addressed by the fourth respondent to the first respondent requesting to regularize the services of the workmen shown in Annexures I and II as their cases also fall under the parameters of the Circular dated

16-9-1999. Since the petitioner fulfilled the condition of 4 hours of work and 240 days in the preceding 12 months from 1-8-1998, he is also entitled for conversion as a full time casual labour.

Writ Petition No.9758 of 2004

31. The petitioner submits that he was appointed as a part time casual labour for three hours from 1-9-1989, five hours from 25-11-1989 and six hours from 1-7-1990 in the respondents' department. She contends that as per the Circular of the Telecom Department dated 16-9-1999, she is entitled to be considered for conversion as a full time casual labour and is also entitled to get temporary status.

32. The respondents contended that since the petitioner is working with the contractor prior to the issuance of the Circular dated 16-9-1999, she is not entitled for conversion as a full time casual labour, as provided under the Circular dated 16-9-1999.

33. The petitioner is shown at S.No.1 of Annexure II appended to the letter dated 27-9-2002 addressed by the fourth respondent to the first respondent requesting for regularization of services of the casual labourers whose names were shown in the Annexures I and II. It is shown in Annexure II (extracted at para No.19) that the petitioner is working since 1-9-1989. As discussed in detail about the Circular dated 16-9-1999 issued by the Ministry of Telecom Services, and the findings arrived at by me in Writ Petition No.10799 of 1999, the part time casual labourers who continuously worked for 240 days preceding 12 months prior to 1-8-1998 with four hours or more per day are entitled to be considered for conversion as full time casual labourers. Since the petitioner worked for 6 hours per day since April 1990 till 31-8-1999, she is also entitled for conferment of temporary status after conversion as full time casual labour.

34. In the result, W.P.Nos.10799, 10885, 10886, 10901 and 9758 of 2004 are allowed. I hold that the part-time casual labourers who worked in the respondents Company as on 1-8-1998 and who have completed 240 days immediately preceding 1-8-1998 are entitled to be included in the scheme for granting of temporary status. Since the petitioners continuously worked as part-time casual labourers as on 1-8-1998 for more than 240 days, they shall be converted as full time

casual labour and confer temporary status on them.

_____

(Dr.G.Yethirajulu, J)

14th October 2004

Note:

L.R. copy be marked:

(By Order)

svs

ASSISTAANT REGISTRAR

// TRUE COPY //

One fair copy to the Honourable Dr. Justice G.Yethirajulu

(For his lordships kind perusal)

SECTION OFFICER

To

1. The Senior Deputy Director General (Electrical) BSNL, Government of India Enterprise, 10th Floor, Chanderlok Building, 36 Janpath, New Delhi 110001.
2. The Chief General Manager, BSNL, AP, Hyderabad.
3. The Principal General Manager, Telecom District, Hyderabad, AP.
4. The Principal Chief Engineer (E), BSNL. Electrical Zone, Hyderabad-500 001.
5. The Superintendent Engineer (Electrical), BSNL, Nampally, Hyderabad.
6. The Executive Engineer (Electrical), BSNL, 5-8-363, Chirag Ali Lane, Abids, Hyderabad.

7. The Superintending Engineer, BSNL, Electrical Zone, Vijayawada.

8. The Executive Engineer, BSNL, Electrical Zone, H.No.19-6-18, D.R. Mahal Road, Tirupati.

9. Mr.Krishna Devan, Advocate (OPUC)

10. Mr.C. Yadagiri, Standing Counsel for BSNL (OPUC)

11. Mr.R.S.Murthy, Advocate (OPUC)

12. Mr.T. Hanumanth Reddy, Advocate (OPUC)

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